

by H. Bentinck

A
R E P L Y
T O

A P A M P H L E T,

ENTITLED

The CASE of the Duke of PORTLAND,

RESPECTING

Two Leafes lately granted by the LORDS
of the TREASURY

T O

Sir JAMES LOWTHER, Bart.

L O N D O N :

Printed for G. KEARSLY, No. 1, and F. NEWBERY,
No. 20, in Ludgate-Street; and RICHARDSON and
URQUHART, at the Royal Exchange. 1768.

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THE clamours which have been excited against administration for the supposed violation of private property for their own particular purposes, is one of those popular and fascinating topics, which, by the influence of its sound, seizes on the ears of the multitude, is never examined to the bottom, yet descends into their hearts with all the energy of truth and conviction, raises prejudices, and inflames resentment against men in power, and even against the Sovereign himself.

The subject, which has afforded no unacrimonious altercation on this head, is the forest of Inglewood, in Cumberland, which, it is alledged, was formerly granted by King William to the first Duke of Portland, and which is now granted to Sir James Lowther; this patent has been exclaimed against as indefensible by law, and a notorious violation of private property. Notwithstanding the too general prevalence of this outcry, I shall not he-

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fitate to declare myself of a contrary opinion, and I shall therefore, in vindication of it, lay my sentiments before the public.

I solemnly protest, I have neither friendship for Sir James, nor displeasure against the Duke, nor either of these sentiments for or against any nobleman or commoner who may be supposed to be interested in this affair. I know not either of their persons; I never have received, nor am I to receive, the least favour or advantage from one among them. My sole motives are the desire of preserving the public tranquillity, by representing truth, and of shewing that his Majesty is as equitably entitled to the granting the forest of Inglewood to Sir James Lowther, as King William could have been to the Duke of Portland; and by these impartial means I hope to obviate the many misunderstood and illiberal calumnies which have been propagated against those personages whose conduct has not merited such treatment.

Private property is that possession, either in lands or chattles, to which any man is justly entitled, circumstanced, and circumscribed in the tenure and conveyance, and donation, according to the established laws of the realm. And in this place it is to be observed, that the King is not precluded from the enjoyment of private property, nor indulged in farther rights therein than the meanest of his subjects, by any act of legislature. The crown lands are private pro-

property, and the King is limited in his rights of them by the law ; and according to these laws, “ the King may not grant away an estate tail in the crown, and the law takes care to preserve the inheritance of the King for the benefit of his successors.” Thus the sovereign, like the subjects, is controuled by law ; and his heirs, like those of other men, cannot be deprived of their lawful rights.

From a dispassionate survey of this law, it is self-evident, that King William could not legally convey the forest of Inglewood *for ever* to the Duke of Portland’s great grandfather, if there was any grant at that time made, unless it was either for a certain term of years, for ninety-nine years determinable on three lives, or some such limited duration, it must have been illegal ; and this is clear from the prohibition which the laws ordain against the King’s depriving his successors of their inheritance in their private property. Such being necessarily the case, if the term is not expired, the three lives not dead, or the power of some other limited conveyance is not extinct, the grant to the ancestor of his Grace the Duke of Portland is still valid and in full force. But if neither of these circumstances are now existing, the forest is in the crown, the grant to Sir James Lowther legal, and the title of the Duke of Portland has no existence.

But in this case, according to Mr. Cooper’s letter to the Duke, *it is the opinion of the Sur-*

veyor General, that the forest of Inglewood is not included in the grant to the Duke of Portland by King William, but that it is now vested in the crown. Hence it appears, the Duke lays claim to an estate, which is not only not his right, but was never granted to his ancestor; and deems that his *private property*, which never did in reality belong to his family, but has been constantly, since the reign of King William, the *private property* of his successors to the throne.

If this be the true state of the case, the behaviour of the Duke of Portland will wear a very different complexion from that which he has endeavoured to put upon it. According to his Grace's declaration, this estate is worth thirty thousand pounds: it may therefore be, not unreasonably, supposed to have yielded a thousand a year: and as he confesses also, that it has been seventy years in the family, he and his ancestors have derived seventy thousand pounds for an estate to which they have no grant nor title; and yet his Grace still persists in his having a just title to this forest, and complains of ill usage in either view, whether the estate was granted or not. King William had no right to grant it *for ever*, unless indeed the King be above the laws, and King William had the right of extending his prerogative uncontrouled by the established legislature, and his present Majesty is precluded from the just right of inheriting and bestowing his private property,

property, according to the known laws of the land. Such sentiments but ill agree with the pretended principles of friends to the Revolution, unless they can prove that King William was justly entitled to the exercise of that arbitrary prerogative which they justly condemn and deny to the Stuarts, and that our present Sovereign has no title to the protection of the laws, which are the common birth-right of his meanest subject.

That King William had no right to extend his grant of the forest of Inglewood *for ever*, is manifest from the bill which was last sessions attempted to be brought into the House of Commons. “ A motion was made for leave to bring in a bill for quieting the possessions of the subject, and for amending and rendering more effectual an act of 21 James I. for the general quiet of the subject, against all pretences of concealment whatsoever.”

If we stick to the literal meaning of these words, not only the *subjects* were in commotion but *their possessions* also, since both required *quieting* by law. As the phraseology of this motion imparts no great honour to those who made it, I shall omit their names; but the singularity of the expression is not more extraordinary than the intent. It was designed in favour of *private property*, as it is asserted, and yet both the King and his subjects, for the latter are equally included, were to be thereby rescinded from all power of obtaining their
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rights and estates, after a sixty years possession by those who were not intitled to enjoy them. This, indeed, is not only a signal illustration of their notions of private property, but of public justice, and of their desires and pursuits also to preserve them in favour of those who have no right to such a protection, unless unlawful detention be a legal title to private property. But the act itself to which it was alluded in this motion, expressly declares that it could relate to no other, except to grants antecedent to the time of King James I. Their endeavours therefore to have a law passed at present to the same purpose, manifestly evinces that King William could make no legal grant of the forest to any subject, *for ever*; that the forest was justly, at the hour of this motion, in the hands of the Crown, and that the Duke of Portland had no title to it.

For certain it is, that whatever may be the grant from any King to any subject, if it stands in need of an act of the legislature to make it valid, that grant is necessarily ineffectual in itself. Wherefore, if the patent of King William had already given stability to the possession of these lands, it would have been absurd and useless to have enacted a statute to make it so. Those therefore who are the friends of his Grace of Portland, who made this motion in the house, do really, though not expressly confess, that even in their opinions, the Duke has no right to the retaining
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this forest in his possession, and of consequence they do, by the fairest implication declare, that it then was legally in the Crown.

These advocates therefore for the sanction of *private property*, have erred in their outset, or disregarded the principles on which they pretend to found their proceedings, I mean the conservation of *private property*; unless they can explain in what manner the endeavouring to deprive his Majesty of an estate, whose *property it is*, and to continue it to a person whose *property it is not*, is consentaneous with the true ideas of *private property*. If this be allowed, the King is rescinded from those rights which the subjects enjoy; the laws protect the people, and leave the Sovereign exposed to violation. These sentiments, I fancy, can hardly be supported by any arguments which can be derived from the nature of equity, or the principles of the constitution.

Let us now examine the reasons on which the Duke of Portland has founded his claim of retaining this forest, in opposition to the patent granted by his Majesty to Sir James Lowther.

The advertisements which have been published in the Political Register, one as proceeding from the Duke, the other from Sir James, as well as the pamphlet written in favour of his Grace, are those papers to which I shall

I shall appeal for the support of what I have to offer.

His Grace begins his advertisement in a very singular, and, I believe, unprecedented manner—"Whereas the *Lords of the Treasury* have thought proper to grant to Sir James Lowther, a lease of the Crown's supposed interest in the forest of Inglewood, &c." Sir James, on the contrary, declares,—“Whereas his *Majesty*, by his letters patent, hath been pleased to grant unto Sir James Lowther, &c.” The contradiction in the persons who are said to have granted this patent, would afford an ample field for drawing such inferences, as would not abundantly redound to the honour of one of those persons; and for retorting, with much justice, a recrimination on the envenomed imputations contained in a very late publication; but as being extremely outrageous is in general a proof of being extravagantly erroneous, I shall purposely omit the saying any thing on the manner in which it deserves to be treated, and proceed to enquire into the validity of those reasons which his Grace has published, for his attempting to retain the forest of Inglewood; and these are, “That his claim is founded on a grant made in the last century, by King William the Third, to his great grandfather, and his heirs, for ever; and confirmed by an uninterrupted possession of more than sixty years.”

On the contrary, the Surveyor-General declares, “That the lands in question are not included

cluded in the grants made by King William to the Duke of Portland, and that they are now vested in the Crown." Both of these assertions cannot be true: I presume not to decide on which side the veracity lies; but if these lands are included in these grants, it cannot be reasonably imagined that these conveyances have not descended to his Grace, and will prove the effectual means of evincing the falshood of the Surveyor-General, or his Grace himself will be proved to be mistaken. That this proof is incumbent on the Duke, is the known rule and constant practice of the law, since no man is either required or permitted to prove a negative. His Grace has therefore a very fair and eligible opportunity to disprove the assertion of the Surveyor-General, and to place him in no very respectable light; or the Surveyor will be considered as speaking truth, which, peradventure, may not be a very pleasing circumstance to that nobleman.

But, should his Grace's assertion be found to contain the strictest truth, and ten thousand grants of these lands *for ever*, by King William, produced, nevertheless the laws which are before quoted on this subject, which preclude the Kings of Great Britain from this right of eternal conveyance, and the motion for the Bill already mentioned, to impart validity to these grants, are an evidence, beyond the power of refutation, that King William had no legal authority to make such grants, the Duke

no lawful right to avail himself of them, and that therefore the lands in dispute are justly in the Crown.

Such being the true state of the case, either that this forest was never granted to his Grace's ancestor, or that this grant has long since expired; it appears to me, that instead of complaining that it is unjustly resumed at this time, the Duke of Portland should have gratefully acknowledged the goodness of the King and his predecessors on the throne for the indulging his family in the possession of them. Seventy thousand pounds. If these lands are not included in King William's grants, or one thousand a year since the expiration of them; if they were, are such acts of munificence, which may reasonably claim the acknowledgment of favours to his Sovereign from the greatest Peer in this realm, and would have brought no imputation of unbecoming demeanor on the Duke of Portland. Of this truth I am perfectly persuaded, that if the Duke of Portland was in a situation respecting one of his tenants, as similar to that in which his Majesty stands to him, that his Grace would declare himself to be of the very sentiments which I am now endeavouring to justify.

Let it be supposed that the Duke's great grand-father, had never granted in a lease to any man for particular services, such lands as he had held, for seventy years, under a supposition that they had been excluded in the grants
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of other estates, or that he had granted them *for ever*, though the laws interdicted his right of granting but for a certain term of years, and that this person had held and enjoyed them for a considerable time after the lease was legally expired : let us suppose that his Grace being come to the possession of his paternal inheritance, had discovered the illegality of his ancestor's conveyance, and resumed his right to that estate ; should this person, who had held them from the beginning without any title, or a great number of years after the title was extinct, have complained of ill treatment, and have founded his right to these lands on the possession of seventy years in all, or in great part of which time he held them illegally ? Would his Grace have considered him as a grateful man, or granted his pretensions, which were founded either on a possession originally unlawful, or on a grant, the duration of which was long since expired ? And if he complained of the injustice of this equitable resumption, would not such behaviour have justly exposed him to the contempt of all unprejudiced and impartial men ?

Is there any disinterested person who will declare, will the Duke himself, that he would or ought to renounce his title to such an ingrate ? Would any man have blamed his Grace for re-possessing himself of his own private property, or have attempted to vindicate the ungrateful grantee, who, not content with the

advantages of a long and illegal revenue from these lands, would nevertheless attempt to acquire an eternal right from the indulgence of that nobleman, in his suffering him to possess them without any grant, or for so long a duration after the term for which they were granted was expired?

Would men reason for their Sovereign as they do for themselves, and allow him the same rights to *private property* which they enjoy by law, and be equally entitled to, the same conclusions would be drawn in this instance of the forest of Inglewood, as in the case which is just stated respecting the Duke of Portland. But it seems they would maintain that King William had a lawful right illegally to cut off his heirs and successors from their inheritance of private property. But would the Duke of Portland acquiesce in such unjust conduct, had his ancestors treated him in a similar manner?

But it is alledged, that these lands are resumed, and the patent granted to Sir James Lowther, at the intercession of a Royal Favourite. Let this be granted. And what reason can be fairly offered why his present Majesty should not bestow this forest, to which he has the same legal right that King William possessed, to his Favourite, if such he has, as well as the preceding Prince to that favourite which he then had? How can the same conduct be deemed reprehensible in the present King, which

which is considered as laudable in King William. Can their different names create a difference of merit in the same transactions; or have seventy years illegal tenure, deprived his Majesty of the right of granting the Crown lands, and of retaining them by the Duke of Portland, to whose ancestors they were either not granted, or the grant of which has been long expired?

But there is yet another cause of grievous accusation. This forest has been resumed, in order to its being granted in favour of administration, and the securing votes in the election of Knights of the Shire for the county of Cumberland. Let this be granted also. And wherefore should not this grant be made to obtain the same purposes? The act is legal; should it therefore be declined because it may acquire an interest in the county election to the advantages of administration, and the estate which imparts this interest left in the hands of a person who is in opposition, and who intends to apply it to his own particular purposes and resentments?

If men would dispassionately weigh the arguments on both sides, and impartially examine their own bosoms, they will find that they have been warped by the heat of prejudice, and influenced in all their sentiments by an aversion to one particular person, and not by the merits of the preceding cause.

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But they should consider, that the opposing justice through pre-occupation and resentment, and the disallowing those rights to their King to which he is as legally entitled as themselves, is neither becoming the impartiality of honest men, nor the duty of loyal subjects.

Having in the preceding manner, fairly stated the case of the Royal grant to Sir James Lowther, evinced that the Duke of Portland can possess no just claim to the forest of Inglewood, and proved that his Majesty, as the legal possessor of his private property has the undoubted right of resuming these lands, and conveying them to whatever subject he shall please, under the limited circumstances contained in the patent, I now proceed more amply to examine into the merits of that pamphlet, entitled, "The case of his Grace the Duke of Portland, &c."

And, in the conduct of this enquiry, I shall shew myself as ready to acquiesce with the writer as with the administration, having proposed no other object in this research but the supporting truth and the establishment of justice. And as the writer of this production has been graciously pleased to distinguish the late House of Commons, with the illustrious appellations of Prerogative Adorers, servile Dependents, Colonists, Misrepresenters, and Explainers away of Iniquity, Violators of Private Property, worthy of abhorrence, and all united in the person of the Ministry; Men of black Thoughts
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and venal souls. All these qualities in these men, as the person who wrote the pamphlet, or the person who gave him the intelligence, is undoubtedly much better acquainted with them than I am, more particularly with those of his own side of the question, I have too much respect for the dignity of great men to be guilty of the egregious ill manners of contradicting them; nay, I frankly confess myself inclined to believe that the portraiture contains some truth; and I will therefore assign my reasons for this opinion, not derived, indeed, from the motion for the Bill being thrown out of the House of Commons, but from its being brought into it.

This motion was made for leave to bring in a Bill “for quieting the Possessions of the subject, and for amending and rendering more effectual an act of 21 James I. for the general quiet of the subject against all pretences of concealment whatsoever.”

According to the letter, and for any thing that appears in it specifically expressed contrary, it appears by this motion to have been intended, that all those who, by murder, by perjury, by forgeries, either of wills, deeds, or other conveyances, by fraud, rapine, collusion, or any other deceits whatever, which the laws have made criminal even unto death, or to other severe punishments, may have acquired other mens estates, and held them quietly for sixty years, that such laudable persons shall

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no longer be open to the legal enquiries of those whom they have injured ; that these estates, so righteously obtained, shall be established to them by law ; and notwithstanding, should there be any discovery of these crimes, beyond the date of this term of sixty years, that though the perpetrators of them should be hanged, their heirs are nevertheless to hold their pious inheritances in tranquility ; and this *against all pretences of concealment whatsoever*.

This, I must acknowledge, is a very promising method of keeping the *possession* in *quiet* ; but I am not quite so sure whether the *subjects* may be so perfectly *quieted* by rescinding them from their lawful rights, in favour of murderers, perjurers and cheats, as these gentlemen imagined. I am in doubt also, whether many people may conceive this motion to have been so entirely in favour of *justice* and *private property*, as the advocates for it assert it was, unless, indeed, that it being against all pretences of *concealment* whatsoever, the property thus obtained, may, on that account, be considered as entirely *private*, then indeed the motion seems to have been formed with the utmost propriety.

But should it be urged in their favour, that this motion was intended only for the enacting a statute for quieting the possessions and the holders of Crown grants, then the mischief of the design is much alleviated, and levelled against their Sovereign only ; and here I desire

fire every man seriously to reflect what is become of the liberty and property of a true Englishman, if he cannot illegally withhold the lawful rights of his Sovereign, and keep that estate to himself to which he was never entitled, or the title to which has been long since expired. Wilkes and Liberty for ever.

Having in this manner both agreed with candour, and differed with freedom from the judicious writer of this preceding pamphlet, I come now to the Duke of Portland's complaint against the Surveyor-general, because he declares, that "this forest of Inglewood was not conveyed by King William's grant, but was vested in the Crown, and therefore recommends it to be granted to Sir James Lowther." The foundation of this complaint is, "That the report of the Surveyor-general, who is not a lawyer, was returned to the Treasury without having taken the opinion of the Attorney or Solicitor-general, tho' on a point of law; or hearing the Duke of Portland's lawyers in defence of his title." Now, as I candidly agreed with this writer in part of his introduction, I beg leave to differ entirely from him in this particular. Instead of its being a point of *law*, it is in my opinion a point of *fact*; it is, whether the forest of Inglewood be contained in the grant to his Grace's ancestor, and not whether there be any defect of conveyance in this grant; and, as the Surveyor-general may be reasonably supposed to have the grant, the

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maps and plans of the Crown also before him, these circumstances seem to enable him to decide this affair as well as the best lawyer in England ; and on this account, I think the Surveyor-general “ the properest person to decide a great matter of right and property,” circumstanced as this is.

The Duke of Portland's next complaint is against his treatment, after having applied for a suspension of all proceedings in the matter, till he had an opportunity of laying his title before the Board of Treasury. In vindication of this complaint, he quotes the letter from Mr. Cooper, which says, “ If his Grace would be pleased to lay before the Duke of Grafton, and the other Lords, a state of his claim and title to the forest of Inglewood, they would refer it to the *Surveyor-general*, and send him back also, at the same time, his report upon the memorial of Sir James Lowther ; and I am directed also to assure your Grace, that no step shall be taken towards the decision of the matter in question till your Grace's title has been stated, referred to, and reported on by the *proper officer*, and fully and maturely considered by the Board of Treasury.”

Such being the letter from Mr. Cooper to the Duke of Portland, as it is transcribed into the preceding paper on this subject, I here again candidly confess, that I perfectly agree with the writer of his Grace's case, in the following passage, *except the eight last words* ; and therefore,

fore, like him, and in his style, " I will stop the reader in this place, and recommend him to weigh every word of this letter with the utmost attention and accuracy, and then tell me whether there can be found any terms in the whole extent of language more explicit, or more peremptory than these? Is there the least ambiguity or loophole for mental reservation? The Duke of Portland desires to be heard by council in support of his own rights; can there be devised any proposition more reasonable and just? The Treasury assure him, that no step shall be taken till his title has been stated, referred to, and reported on by the proper officer, and fully and maturely considered by the Board." So far we agree, now comes the subject of our difference—" Yet these words were given to the wind."

There is not a more pernicious practice in all education, than teaching children to read, who are never likely to understand what they read, except it be that other of teaching them to write also, which so frequently exposes their want of common sense, to the ridicule of all mankind. As I am strongly tinctured with Philanthropy, I wish the parents of this writer had conducted his education according to the above remark, it must have proved of great service to their son. For example, in this very instance of Mr. Cooper's letter, wherein it is said, " that if the Duke of Portland would lay before the Treasury, the state of his

claim and title to the forest of Inglewood, they would refer it to the *Surveyor-general*." And in the subsequent part, "that no step should be taken towards the decision of the matter in question, till his Grace's title has been stated, referred to, and reported on by the *proper officer*." Now, if this writer had weighed every word of this letter, as he recommends it to be done by his readers, would not he have found, that the *Surveyor-general*, and the *proper officer*, are expressly meant to be the same individual person? In what sense then were *these words given to the wind*, when it appears they were strictly complied with, according to his own account? It is certainly an unreasonable expectation in him, that Mr. Cooper is to send him letters, and find him sense to understand them. And I do heartily agree with him, *that no terms can be found more explicit or peremptory than these*, to express the meaning which they were intended to convey; I mean in English language; as to the *whole extent* of language, I confess I understand but few in that extent; and as that writer may understand all that exist, one excepted, which is English, I shall not presume to decide what may be effected by any of the rest.

It is obvious to every common capacity, that according to Mr. Cooper's letter, the Board of Treasury did not promise to hear the Duke of Portland's Council; they promised, indeed, to lay it before the *proper officer*, and this they literally

terally performed ; nor can this sagacious scribe bring the least proof to the contrary, unless by his accurate and attentive weighing of every word, and his skill in the whole extent of language, he has discovered that the Duke of Portland's Counsellor was the proper officer, before whom to lay his title, to whom it ought to be referred, and by whom it was to be reported on. This, however, I fancy he will be embarrassed to effect in English, whatever he may achieve in the Chinese or Mexican languages. Hence it appears, that what was promised in the letter, and asserted to be uncomplied with by the pamphlet writer, has been punctually observed in the execution. Should any man ask me to lend him my horse, and I replied, I had roast beef for dinner, ought he to conclude, I had granted him his request, and therefore upbraid me with breach of promise if I refused it to him ?

But the Board of Treasury are accused of " not having fully and maturely considered his Grace's title." And yet, in another letter from Mr. Cooper, in the Appendix to the pamphlet, it is assured that the Board of Treasury have actually done what the pamphleteer denies. That this writer, who was never present at any of these boards, should be better informed in this matter than the Secretary, who was, seems a little unaccountable. I have heard of a wounded sailor's being thrown overboard for pretending to know better than the
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proper officer, in an affair of which he might be more reasonably considered a proper judge than this writer in the present paragraph. It seems this wounded seaman, being carried to the surgeon, in time of action, thought it more convenient to feign himself to have been killed, and to lie quietly amongst the dead, in the Cockpit, without the risk of farther danger, than to have a slight wound dressed, and return to action. The battle being won, and the sailors examining in the Cockpit, who were dead, and who were not, on coming to this sly fellow,

Who shut his eyes and stopt his breath,
And to the life out-acted death,

the surgeon pronounces, " That fellow's dead, throw him over-board." It was now no longer time to counterfeit ; No, cries he, " Indeed I am not." D—n you says Jack, who was taking him up, " What, do you know better than the Doctor ?" and sent him over-board for his impudence. I leave the gentleman to make the application in what language of the whole extent he pleases.

In consequence of this superiority of attention and accuracy, weighing words, and extending of languages, the said scribe presumes at length to turn prophet, and to predict, " That some judgment hangs over the head of the Board of Treasury, some *fate* or *fatal*
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influence impels them to their ruin."—This distinction between *fate* and *fatal influence*, it must be confessed, is admirable and precise; and it would be the same, I dare say, in every language he understands; but the metaphor in this place does not seem to be too well preserved. If the judgment hangs *over* their heads, I humbly presume they must be *under* it; then if *fate* or *fatal influence* should *impel* them, they will be rather *pushed from* than *to* their ruin. I must leave him to reconcile this matter as he can, only I shall just stop to tell him that a just judgment is already fallen on his head, viz. That he is the most insufficient advocate that ever presumed to defend a bad cause, than which there can be nothing worse, his manner of supporting it excepted.

Another cause of violent accusation is this, that the Duke of Grafton had promised to his Grace of Portland, that his agents should have permission to inspect the Surveyor's office, and that this promise was not complied with. It seems the Duke of Portland presented a memorial, expressing that, "in regard that all public records ought, and by all courts of judicature are directed to be inspected for the benefits of the parties interested, your memorialist prays your Lordships direction to the Surveyor-general, to permit your memorialist's agents to inspect all the surveys, court-rolls, and other muniments and writings in his custody, relating to the matters in question, and
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that your memorialist may be at liberty to take copies thereof, or such parts thereof, as he shall be advised, that your memorialist may be enabled to lay the merits of the case before his council, and manifest his title to your Lordships."

This memorial is not much unlike the Welshmen's petition to their representatives in the last century. They prayed, that as it had been their prescriptive and immemorial privilege to steal sheep with impunity, that the parliament would give them leave to steal a little cow now and then.

In fact, the inference from the privilege of inspecting the *public records* of the realm, to that of inspecting the *private records* of his Majesty, relative to his *private property*, is equally strong and conclusive for the inspection of the writings of any individual subject. Now, I imagine, his Grace of Portland, who desired this permission, in his own favour, would think it a very insolent request, should any Lord or Commoner, in a similar case, desire the like favour from him, and absolutely refuse it.

Such an application to that nobleman would, in fact, convey the following meaning; "May it please your Grace, as I have commenced a law-suit against you for a certain estate, the title to which I cannot possibly make out, unless you assist me with the inspecting and copying your writings, I therefore desire you would order your steward to permit me to have
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free access to his office for that purpose."— Would not this request be like two potentates, who having declared war against each other, and one of them having neither arms nor ammunition, desiring the other would be pleased to furnish him therewith in order to destroy him.

However, it appears, according to this writer, that the Duke of Grafton did, inadvertently, promise, that the Duke of Portland should be permitted to inspect the Surveyor's office. But when, on a second report of the Surveyor-general, his objections to the inspection were so "strongly marked and expressed, that the Lords were of opinion that they could not direct it to be allowed without the hazard of great inconvenience and prejudice to his Majesty's interest on future similar occasions, and applications;" it was then the Duke of Grafton first saw the impropriety of his great willingness to oblige the Duke of Portland, and of granting him that promise. Had it been an engagement relative to his own private property, it had been instantly complied with by his Grace; but since he was the King's servant, and had no title to the making this promise, he perceived he was not in honour bound to adhere to it, and was convinced that he ought not to have engaged his word; but he thought a breach of an unauthorised promise was preferable to a breach of trust; and that he was absolutely bound

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not to expose his master's private records to those who sought to invade his private rights and property, and therefore preferred the least culpable conduct; and in this action, I believe, he will be supported by the soundest casuists, even though it should be this writer's opinion, that it is more preferable to adhere to an unauthorised promise than to retract it, and prevent the mischief which it must induce.

And certain it is, that if the Duke of Grafton be reprehensible for his having made the preceding promise, he would have been unpardonable to have advanced from that error, arising from complaisance and readiness to serve the Duke of Portland, to that other of exposing his master's *private* records of *private property*, after so expressive and so just a remonstrance of the Surveyor-general, and after the being ascertained that it is totally repugnant to the rules of that office. His Grace, therefore, ought to be at least unblamed for his obliging disposition to serve the Duke of Portland, and applauded for the preferring his duty and his master's just service, to the imputation of being guilty of breach of promise.

Having advanced thus far, this writer at length acknowledges that the Duke of Portland had *not* a claim, *ex debito officii*, to the inspection of the Surveyor's office. But the Treasury, as he says, will not stop here, but proceed farther, viz. That the precedent of permitting

ing an antient Crown grantee to defend his title out of these very materials, will be a prejudice to the King's interest in future similar occasions, and create great inconveniences in the future management of the land revenue. That is, in plain English, let any Crown grantee have, *bona fide*, ever so good a title, yet if by length of time, or any casualty, he has the misfortune to lose the proof of his title, although there should be lying in the Surveyor's office sufficient proof of his right, yet the King shall recover his estate, notwithstanding the real right of the possessor, while the surveyor knowingly suppresses the evidences of the true right."

To this I will answer, that if men, who never had a grant to the crown-lands which they presume to retain, will still persist in holding them thus unjustly, the King must inevitably be deprived of all his landed private property, and if his private records are to be open to the examination of all men who are in law against their Sovereign, he is in a worse situation than any of his people. There is then one kind of justice for the King, and another for the subject; a distinction which this legislature does not authorise; and I dare affirm, that there is not an individual in the kingdom who would not, in a similar case, refuse the inspection of his records to the King's agents, was his Majesty plaintiff, and that person defendant; and I shall shew, that this would probably be the

case of the Duke himself, from that conduct which he has observed in this very instance. It is a request which, in its nature, conveys a more culpable behaviour than the breach of fifty thousand promises made for granting it in the present case. It is asking a servant to desert his master's cause, and to strengthen his adversary to the prejudice of his Sovereign.

The clamour which this writer has so unjustly endeavoured to excite against the Duke of Grafton, being thus fairly refuted, even on the very grounds on which he himself has placed it, I will now shew that his representation of that transaction is fallacious, that the Duke of Grafton, though he did not command the Surveyor-general to expose his office to the inspection of the Duke of Portland's agents, and literally comply with his promise, did as effectually perform it, to all the intents and purposes which these agents could have desired or obtained by inspecting; and so far is his Grace of Grafton from being the object of accusation for *breach of promise* to the Duke of Portland, I am in doubt whether it may not be more reasonably concluded that he has offended by *breach of trust*.

The Duke of Grafton being convinced that it was improper to permit the inspecting of the King's private records, and yet considering that he had promised his Grace of Portland that his agents should have that liberty, resolved on the following method in order to avoid the complying with the inspection, and yet virtually to preserve

serve his promise: he ordered the Surveyor-general to draw out a state of the crown title to these lands, exactly as it was in his office, and this being faithfully done, it was transmitted by the Duke of Grafton to the Duke of Portland, at the same time requesting his Grace of Portland, that he would transmit to the Board of Treasury the state of his title to these lands, that by these means, being acquainted with the claims on both sides, the matter in question might be settled according to right and justice; but with this request of sending his title to the Treasury, the Duke of Portland has never complied to this hour.

Let the world judge of the justice of that complaint against being denied the inspection of private records in a private office, in order to make out his title to an estate, and of a breach of promise in the Duke of Grafton in not observing his word on that head, by a man who has received the state of the crown's title on the very subject in dispute, and nevertheless refused to give the state of his title in return, and in order to come at right and justice. Had the Duke of Portland been first Lord of the Treasury, can it be reasonably inferred from this present refusing the state of his title to the board of Treasury, that he would have complaisantly transmitted the title of the crown lands to the Duke of Grafton, had he been soliciting it as a private subject; and yet from this readiness to oblige the Duke of Portland, it cannot

not be well denied, that as a private subject, his Grace of Grafton would have sent his title to the board of Treasury, in circumstances similar to those which have been stated. Decide of these Dukes by their actions.

That the transaction has passed in the manner which is above related, I have now indisputable authority to affirm; let this sorry writer either prove this relation to be false, or confess his disingenuous and criminal behaviour in misrepresenting some parts and concealing the rest

And in this place, to save him the embarrassment of a partial and fallacious apology for this conduct in the Duke of Portland, I will inform the world of the true reason, grounded on the preceding authority. The state of the crown title to the forest of Inglewood and manor of Carlisle, being drawn out and delivered to his Grace of Portland, it was proved beyond contradiction that neither of these estates had ever been granted by King William to his ancestor. The manor of Carlisle had been settled in marriage by King Charles the Second, on Catherine his Queen; she survived him and King William also; and not long before her death granted a lease of ninety-nine years, determinable on three lives, the last of which has survived till within a very few years. Let the world judge then whether King William could have possibly granted this manor to the Duke of Portland's great-grand-father. With what degree

degree of truth then is it asserted, in the advertisement, that it was granted by King William to that nobleman *for ever*, when it never could have been granted by him to any man

In like manner, respecting the forest of Inglewood, it must have been ascertained by this state of the crown title, by the courts and other transactions which have been held in that forest by the servants of the Crown; and lastly, by shewing that what was to be granted to Sir James Lowther, had never been included in King William's grant to his Favourite; that whatsoever had been granted and conveyed to the said Favourite, Mynheer Van Bentinck, was still specifically excepted out of this grant to Sir James Lowther, and positively reserved to his Grace of Portland. After a conviction of the truth of all these circumstances, from the state of the crown title, there may be found, without much difficulty, the reason why his Grace of Portland has not transmitted a state of his title to these lands. Had I been acquainted with these truths, before I began to write on this subject, it would have saved me much trouble on this head. The preceding state of the case would have effected a perfect refutation of all that has been advanced on the part of the Duke of Portland; but being convinced even from their state of the case, that their proceedings and assertions were fallacious; that the Board of Treasury was unjustly accused; and that his Majesty was, by these means, indirectly

directly to be rendered less amiable in the eyes of his people, like William Rufus, slain by an arrow glancing against a tree, and obliquely lodging in his bosom ; I became a volunteer in defence of truth and justice, in order to suppress misrepresentation and seditious opinions, which were gaining ground in consequence of the exclamations which were excited against the violations of private property by illegally exerting the crown prerogative, than which there has existed nothing less true since the creation.

Besides the preceding, there is yet another most virulent accusation, " That the Treasury should have resolved, on the grant to Sir James Lowther, as the shortest way of coming to a decision in whom the right existed, whether in the Crown or the Duke of Portland." And I will add that this was the justest way also. And this shall be evinced, not only from those reasons which this futile and suicide writer has assigned to the contrary, but from others which are irrefragable. He represents the Board of Treasury as " being without the least smattering of law among the members." And then condemns them, " for not consulting the crown lawyers on this affair." Had the Treasury observed this method of applying to the crown lawyers, they must either have implicitly obeyed their opinions, or have taken their own. By observing the first, and determining according to the advice of the crown

crown lawyers, they would have been guilty of implicitly coinciding with what this scribbler asserts they do not understand, *an opinion in law*. Had they followed their own sentiments, it would have been still more absurd, because they would have decided as *judges* on a matter which he asserts also they do not understand, *the law*. The Treasury, for these reasons, are certainly justified in the manner in which they proceeded.

But they are condemned also for not hearing council on both sides, *and without the least smattering in law*. For not sitting as judges to determine a cause of such consequence. This seems to be a most strange piece of contradiction ; they are condemned, that, being ignorant of the law, they did not apply to the crown council for advice ; and they are condemned also, that being ignorant of the law, they would not sit as *judges*, and determine this matter, which, according to what this writer affirms, they do not understand ; and this is as just an accusation, and as reasonable, as if this writer should condemn a black horse for not being of two colours.

The Board of Treasury being thus fairly exculpated from all just cause of accusation, on the very principles which this scribbler lays down for condemning them, I will now proceed to tell him the true reason why the Lords of that Board refused to decide the matter in

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question,

question, and to send it to the Courts at Westminster.

The Duke of Grafton having transmitted to his Grace of Portland, the true state of the crown title to the manor of Carlisle and forest of Inglewood, and having requested the Portland title from his Grace, all proceedings on this subject were suspended for more than four months, in order to give the Duke of Portland full time to make out and to send in the state of his title. This time being expired, and no state received by the Treasury, and that Board concluded that none would be ever sent ; and in this the event has verified their prediction. They were convinced also, that the Duke of Portland's title being unsustainable, from what they saw in King William's grant to Mynheer Van Bentinck, that the case must be decided in favour of the crown ; and from the spirit of sedition, misrepresentation, and abuse, which had been disseminated through all those who were unacquainted with the real circumstances of the affair, they were convinced also, that the Duke of Portland, instead of acquiescing with their decision, would still erect this determination into a great cause of complaint, and promulgate that the *injustice* of the grant had been followed by a still greater act of *injustice* in this decision of the Treasury against him ; they therefore ordered a grant of these lands to Sir James Lowther, and by that means they have placed the Duke of Portland in

in this justifiable dilemma, either to resign all pretensions to these grants, or to bring his cause before the courts of judicature, where he must be obliged to produce that title which he has refused to lay before the Treasury. And thus this title being to be laid before the judges and a jury, there must result a verdict against, which no man can justly complain, and the Board of Treasury are freed from all accusation of partiality and injustice on that account.

From this undisguised representation of truth it is evident that the Surveyor-general and Mr. Chambers, have acted becoming the characters of upright and sensible officers in advising this method ; that the Lords of the Treasury have proceeded on just grounds, in observing that advice ; that they have just cause to be applauded for this conduct, in spite of all the malignity of the foulest calumny ; and the Duke of Portland no reason to complain, that refusing to lay his title before the Lords of the Treasury in return for the crown title which was delivered to him, he is now sent to seek redress to those tribunals where he must produce that title, or lose his cause. If this conduct of the Duke of Grafton be reprehensible, there is nothing upon earth which is laudable.

But it seems this writer “ can produce a case in point to his purpose on this particular. When the Duke of Newcastle was first Lord

of the Treasury, and Sir George Littleton Chancellor of the Exchequer, such a case was heard before them, and the lease revoked." I will risque every thing on earth, that the circumstances of that case are not in point with those of the present; or that the Lord and Chancellor of the Treasury have been mistaken in their decision, if it was. Besides, I desire this writer to reflect, that a thousand years, nay, that Heaven and Earth may pass away, before this nation may be blessed with a First Lord of the Treasury, equally profound in wisdom, politics, and law, with the famous Duke of Newcastle; and yet such is the perverseness of mankind, I know many sensible men who think it would be extremely absurd to found an universal practice on such a single precedent. And thus we see how mankind may differ in opinion.

Great as have been the exclamations against the Treasury for this supposed deprivation of the private property of the Duke of Portland, and slanderous and groundless as are the atrocious calumnies of this envenomed writer, I think it may be evinced from his own words, that he himself mistrusts the equity of the Duke's title to this estate. He says, " If one transient ray of common justice had shot a-cross the Board of Treasury, if it had perchance occurred that the Duke of Portland, as the lineal heir, and undisturbed possessor, for
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sixty or seventy years, should have had an offer of the lease granted to Sir James Lowther; if upon reference, or consideration before the Board, the Duke of Portland had found his title defective, it would have been worth his while to have given as much more than Sir James Lowther, as the expences of the suit must amount to."

If the head of this writer had contained one transient ray of common sense, he would not have exposed himself by this declaration. The Duke of Portland has not found his *title defective*, for I will venture to affirm he can have found *no title at all*; and were the Board of Treasury therefore to apply to the Duke of Portland, and to offer him a lease of those lands which he had unjustly detained from the crown for more than seventy years, during which this writer falsely asserts they were in the Portland possession, and this in preference to Sir James Lowther; this, indeed, would have been a most extraordinary indulgence for an illegal action, in detaining them so long in his Grace's hands.

I would gladly know whether the Duke of Portland, who now disputes the title of the crown, and asserts that this forest and manor are his right, and has refused to deliver his own title thereto, and yet perseveres in retaining them, would have stood to a decision of the Treasury, and not exclaimed of violated property,

property, had it been determined against him, as it must have been, from what I have already related; and when this writer insinuates that the Duke of Portland would have given so much more than the present grantee, is it it not apparent that he is conscious that the Duke of Portland is defective in title? And does not this incendiary conduct proceed from his not being the purchaser, rather than from any violence committed on private property? I fancy unprejudiced persons will be of my opinion.

Through the whole of this pamphlet there appears a singular attention to the denominating these estates the property of the Duke of Portland. But, by the leave of this judicious scribbler, by what authority can any estate be stiled the *property* of any person, before that *right of property* is determined by law.

In this instance of this writer, it appears the more extraordinary, since he must be supposed to have seen the state of the crown title, delivered to the Duke of Portland, and be convinced, if he has capacity sufficient to be capable of conviction, that what is now conveyed to Sir James, neither could be, nor is contained in King William's grant to Mynheer Van Bentinck; and that all those parts of the forest of Inglewood, which were then granted to that illustrious ancestor, are specifically excepted in
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the lease granted to Sir James Lowther, and still remain, untouched, to the Duke of Portland.

To me it appears, that the conduct of this writer is neither a dutiful nor decent behaviour to his Sovereign, because it more than implies that his Majesty has violated the rights of one subject, to indulge the requests of another. A charge, which had it been imputed to the Duke of Portland, respecting a fellow subject, I am persuaded he would not have quietly borne, but have resented it with a becoming indignation; and consequently he must vehemently resent this oblique and slanderous suggestion of his angry advocate against his lawful Sovereign.

After having said thus much in opposition to this bold scribe, I come now to prove my candour, and to agree with him. And I confess it is a shameful thing of Mr. Watkins to retain that guinea fee of office which he received from the Duke's agent: so considerable an object is a just cause of complaint, and ought, in all justice, to be returned to the Duke of Portland, who, by his detaining an estate, which has probably produced him, according to this account of his advocate, seventy thousand pounds, must be an enemy to all unjust detention of private property.

Such are the material charges of injustice of which the Board of Treasury are accused,

accused. Having obviated these, I hope to the satisfaction of all dispassionate men, I shall therefore take no notice of dates, cunning, and concealments, of delays, hurries, and Hampden; of extended prerogative, tyranny, and oppression; of all the seditious assertions, the groundless and incendiary invectives which disappointment has engendered upon revenge, and which has so bountifully disseminated thro' this angry advocate's production in defence of the fiery Duke, *but give them to the winds*. One thing, however, I cannot omit: It is a request to know why the Surveyor's whole report is not printed in the Appendix? to tell the writer that such concealment is a strong indication of an intent to deceive, and to challenge him to the publishing it. I acquaint him also that I am ready to acknowledge any mistakes which may be found in the foregoing part of this Reply, and I defy him to lay the case before the publick as it really exists, respecting the lands in question. I am now informed, from indisputable authority, that the grants of them, since the reign of Charles the Second, are such as I have related. And if he pleases to produce a true, or a false narrative of this case, I am prepared to prove the insufficiency of the first, and the falshood of the second. And I here tell him, unless he complies with this proposal, he recedes from it through consciousness of being refuted, and confesses that his cause is indefensible.

Actions

Actions and not men being the object of this enquiry, I shall therefore offer nothing more against the egregious abuse which has been so illiberally thrown out against the supposed Favourite, than that no argument can be drawn, *a posteriori*, to sustain the malignity of those slanders.

And, as a candid antagonist, I would advise this judicious writer, should he favour the world with any more of his productions, not to mention the illustrious person to whom this visionary grant is so fallaciously asserted to have been first made ; but on this occasion to adopt the heathen mythology, which declares, that heroes pursue those occupations in the Elysian shades with which they were most delighted in this world ; and on that account, to leave King William and Mynheer Van Bentinck, in the uninterrupted enjoyment of those laudable amusements below, which on earth created the royal predilection of that King for that Favourite, and which obtained such numerous and extensive grants of English lands to a Dutchman and a foreigner.

P. S. The complaint of the Duke of Portland, against the extent of prerogative, and the invasion of private property, is not the only one which now subsists, and founded on arguments not more tenable than the forest. In the duchy of Lancaster, there lies a forest,

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containing twenty-six thousand acres of land. In the year 1751, a certain Earl was appointed *game-keeper*, or master of the game in this forest, for his own and two other lives; two of these being dead, it descended to a certain late Duke, who immediately obtained a reversionary grant from the crown for the present Duke, to whom three Lords are now trustees.

Under these grants, these interested game-keepers have appointed divers game-keepers on the forest, given authorities to persons to enclose lands for several purposes, without notice to the officers of the crown, and, in fact, have exercised all such rights over the forest as fully as if the whole soil was their own; and being opposed in these proceedings, these noble game-keepers, like his Grace of Portland, exclaim against invasions of private property by royal prerogative, and join in the slanderous calumnies against administration. But happily for the King and his subjects, more particularly for those on that forest, the intention of the preceding noblemen has been prevented by the laudable intervention of the present Chancellor of that Duchy. He has too much resolution to resign his Majesty's private property to the possession of insolent invaders, and too much justice to deny his subjects their legal rights; no clamours can
terrify

terrify him from serving his King ; and no mandates from ministers, or even from Sovereigns themselves, induce him to oppress the people. Firm without obstinacy ; just, without rigour ; obedient, without servility ; his errors are such as are in common with good men ; his virtues such as would do honour to the best of any age. Superior to the influence of pecuniary interest, he serves his Prince, and receives not the salary of his office ; rich in himself, and in his patrimonial expectations, he despises the idea of accumulating greater wealth : the friend of man ; the just servant of his King ; the disinterested executer of his duty ; his integrity is at once his glory and his consolation.

In fact, without the necessary assistance of such men, the King will be robbed of all his property ; liberty and loyalty will be extinct together, usurpation and despotism succeed ; thousands of tyrants will oppress the people, in the place of one benign Sovereign, who loved and cherished them. It will then be too late to repent of listening to the seditious and incendiary speeches of their destroyers, and to struggle with their chains : and that such are the present intentions of too many, are evident beyond contradiction, from the too general spirit of rebellion which prevails, and which has been manifested and encouraged
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on very recent occasions. Rouse, Britons, rouse;
 preserve your King and yourselves; for with-
 out the preservation of your Prince, you are
 instant slaves.



F I N I S.

